IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : Crl. Appeal No.1672-SB of 2005
Date of Decision : March 21, 2007.

Ram Singh ..... Appellant

Vs.

State of Haryana ..... Respondent

Coram : Hon'ble Mr.Justice Mahesh Grover

* * *

Present : Mr.J.S.Thind, Advocate
for the appellant.

Mr.S.K.Hooda, Senior DAG, Haryana.

* * *

MAHESH GROVER, J. (Oral) :

On 15.7.2004, Gurmit Singh, ASI, Police Station Sadar, Sirsa, along with some other police officials was present at Kelnia-Jhoradnali road in connection with patrolling. A jeep bearing No.RRF-5844 was seen coming from the side of Jhoradnali. The jeep was stopped and searched. There was one another occupant who escaped. The driver of the jeep, who is the appellant, was apprehended on the spot.

On search, two bags were found in the back side of the jeep. Suspecting the bags to contain some contraband, a notice under Section 50 of the N.D.P.S. Act was served upon the appellant but he expressed his faith in the police team present over there and agreed to be searched by them.

On opening of the bags, it was found to contain poppy straw weighing 41 kilograms in each bag. Two samples of 100 grams each were

removed from the bags, made in two parcels and sealed in accordance with the procedure prescribed by law. The jeep, along with its registration certificate, was also seized vide a separate memorandum. F.I.R. (Ex.PW-5/E) was got registered at Police Station Sadar, Sirsa. Rough site plan (Ex.PW-5/F) and a report under Section 57 of the N.D.P.S. Act was prepared at the spot.

The samples so seized were sent for chemical analysis and after going through the necessary investigative process, a challan under Section 173 of the Cr.P.C. was presented against the appellant.

The appellant was charge-sheeted for having committed the offence under Section 15 of the N.D.P.S. Act, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined as many as six witnesses and also tendered into evidence the report of the Forensic Science Laboratory (Ex.P-X and Ex.P-Y).

In the statements recorded under Section 313 of the Cr.P.C., the appellant denied the allegations against him and pleaded false implication. In his defence, he produced two witnesses namely Harpat Ram as DW-1 and Jaswinder Singh, Head Constable, Police Station Sadar, Sirsa as DW-2.

The trial court, after appraisal of the evidence before it, found the appellant guilty of having committed the offence under Section 15 of the N.D.P.S. Act and went on to convict him to under the R.I. for 10 years and also to pay a fine of Rs.1 lakh.

The aforesaid conviction and sentence awarded to the appellant vide judgment dated 01.09.2005 has been assailed by the appellant by way of the present appeal.

It was contended by the learned counsel appearing for the appellant that two samples were taken but the same were not sent promptly to the laboratory. The first sample was sent after a delay of six days i.e. on

21.7.2004 and the second sample was sent on 26.8.2004. There is absolutely no explanation as to why these samples remained with the prosecution for all this period. This, according to him, was sufficient to vitiate the entire trial.

It was further contended by him that the contraband was recovered from the jeep and it has come in the evidence that when the jeep was signalled to stop, one person, who was a passenger in the jeep, had abandoned it and run away. The appellant, therefore, could not be said to be in conscious possession of the contraband.

Thirdly, it was sought to be contended by the learned counsel for the appellant that no independent witness was examined even though he was joined at the time of the seizure. Besides, the seal was not handed over to the independent witness after the samples had been seized and sealed which is the mandate of the Act.

On the other hand, learned counsel appearing for the State contended that contraband was recovered from the jeep which was taken on superdari by the appellant himself which is reflective of the fact that he was in conscious possession of the contraband.

As far as the seals are concerned, he referred to the report of C.F.S.L., wherein it has been stated that the samples were found with seals intact. That apart, it was contended that the recovery is substantial which rules out any probability of false implication.

I have heard learned counsel for the parties and have perused the record.

There is no doubt that the offence committed under the provisions of the N.D.P.S. Act is extremely grave inviting an equally grave and serious repercussions in the form of punishment provided under the Act. Great care and responsibility shifts on the prosecution to ensure that the safeguards, which have been provided in the Act, are not merely paid a

lip service to.

The Hon'ble Supreme Court in the case of ***Dalip and another vs. State of M.P.*** reported as ***(2007) 1 Supreme Court Cases 450*** has observed as follows :-

> *"It is now well settled that the offence committed under the Act is a grave one. Procedural safeguards provided therefor in terms of Section 41, 42 and 50 of the N.D.P.S. Act should be complied with."*

Proceeding to examine the matter in the aforesaid perspective, one is to notice that the contraband was seized on 15.7.2004 and two samples of 100 grams each were extracted from the bags. C.F.S.L. was required to be filled in on the spot and the seal given to an independent witness. The samples were thereafter required to be sent to the laboratory for analysis instantaneously.

For unexplained reasons, the first sample was sent on 21.7.2004 and the second was sent on 26.8.2004. The only explanation that has come by way of testimony of PW-1 i.e. Dalbir Singh, Head Constable is that the delay in sending the second sample on 26.8.2004 was on account of not getting the requisite docket from the office of DSP (HQ), Sirsa. Even this fact has not been mentioned in the affidavit filed in the court by the said witness and it is only in the cross-examination that he has given this explanation.

The prosecution is under an obligation to establish that right from the time of seizure of the samples, till the time it reaches in the C.D.S.L., it remains untampered with so as to rule out any foul play on its behalf. If the samples remain in the possession of the police for a number of days, without any cogent explanation, then in that eventuality, serious doubt is cast upon the story of the prosecution and the benefit necessarily

has to go to the accused.

In my considered opinion, therefore, the appeal deserves to succeed on this short ground alone. The aforesaid view finds strength and sustenance from a judgment reported as ***1999 (1) RCR (Criminal) 771.***

Consequently the appeal is allowed and the conviction and sentence awarded by the trial court is set aside.

March 21, 2007 **(MAHESH GROVER)**
monika **JUDGE**